

1 DAYLE ELIESON
United States Attorney
2 ELHAM ROOHANI
Nevada Bar No. 12080
3 Assistant United States Attorney
501 Las Vegas Blvd. South, Suite 1100
Las Vegas, Nevada 89101
Phone: (702) 388-6336
Fax: (702) 388-5087
Email: elham.roohani@usdoj.gov

5
Attorney for Plaintiff
6 United States of America

7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
-oOo-

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 vs.

12 JAN ROUVEN FUECHTENER,

13 Defendant.

Case No: 2:16-cr-00100-GMN-CWH

GOVERNMENT'S REPLY TO
DEFENDANT'S RESPONSE TO
MOTION TO STRIKE A PORTION OF
DEFENDANT'S CLOSING BRIEF IN
SUPPORT OF MOTION TO
WITHDRAW GUILTY PLEA (ECF No.
265)

16 The United States of America, by and through the undersigned, files this timely
17 reply to the Defendant's response and continues to move this Court to strike a portion of
18 Defendant's "Closing Brief in Support of Motion to Withdraw Guilty Plea" filed late on
19 May 30, 2018. *See* ECF No. 265. Specifically, the Government asks this Court to strike
20 page 13, lines 5 to 21.

21 The Defendant concedes that this argument was never raised prior to or during
22 the hearing, but rather was raised for the first time in his closing brief. ECF N. 267, at
23 2. The Defendant tries to shift the burden to explain his failure to preserve the argument

by blaming “the Government with FBI agent in tow.” ECF No. 267, at 1. What the Defendant’s excuse entirely fails to consider is that the supposed evidence he relies on that allegedly became known during the five-day evidentiary hearing consisted of *his own witnesses* and *his own testimony*. Indeed, the Defendant confirmed that he knew at the time of his change of plea, eight months before he filed his motion, that the Government drafted the plea agreement. ECF No. 262, at 75.

The Defendant's filing offers absolutely no reasonable legal or factual justification as to why he is only now presenting this argument for the first time. Given the inherent inequity of allowing the Defendant to assert a legal argument for the first time in an untimely closing brief that was supposed to be simultaneously filed with the Government's closing brief, and in a manner that precludes the Government from filing a written response in opposition, this Court should strike this argument, page 13 lines 5 to 21, from the Defendant's "closing brief."

DATED this 11th day of June, 2018.

Respectfully,

DAYLE ELIESON
United States Attorney

/ s / Elham Roohani

ELHAM ROOHANI
Assistant United States Attorney

CERTIFICATE OF SERVICE

I certify that I am an employee of the United States Attorney's Office. A copy of the foregoing was served upon counsel of record, via Electronic Case Filing (ECF).

DATED this 11th day of June, 2018.

/ s / Elham Roohani

ELHAM ROOHANI
Assistant United States Attorney